

DON JUMPER

IBLA 76-247

Decided March 24, 1976

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting appellant's noncompetitive acquired lands oil and gas lease offer, M-31749 (Acq.).

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease

Uncertainty of title to oil and gas in an acquired land tract is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. The burden is on the lease applicant to demonstrate that the minerals he seeks to lease are owned by the United States as an acquired interest. A decision rejecting an offer will be affirmed where appellant has failed to meet this burden and a significant question of title remains.

APPEARANCES: Don Jumper, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas lease offer filed pursuant to the Mineral Leasing Act for Acquired Lands of August 7, 1947, 30 U.S.C. § 351 et seq. (1970). The stated reason for the rejection was that the United States does not hold title to the oil and gas in the subject land.

The decision was reached after the BLM advised the appellant of the uncertainty of title and requested a memorandum of title to the mineral estate. The memorandum provided by the appellant in

response was forwarded to the Field Solicitor, U.S. Department of the Interior, who rendered an opinion that there are no minerals in the subject land available for leasing as acquired minerals by the United States.

In his statement of reasons on appeal, appellant relies upon the memorandum of title previously submitted and the BLM oil and gas plat for the township which appears to indicate that the United States holds the mineral interest in the subject land. Appellant argues that the title memorandum reflects no mineral reservation in the deeds by which the United States acquired title to the land and that the subsequent deeds by which the United States conveyed the land to private parties contain a reservation of minerals.

[1] Uncertainty regarding the status of the ownership of mineral deposits is sufficient ground for the rejection of a lease offer in the exercise of the Secretary's discretionary authority over leasing. Gas Producing Enterprises, Inc., 15 IBLA 266, 268 (1974). Where title to a tract of land which is the subject of an oil and gas lease application is in doubt, the burden is on the applicant to search the land records ^{1/} to ascertain the chain of title and establish the eligibility of the tract for leasing. See Gas Producing Enterprises, Inc., *supra* at 268.

With respect to records concerning land title, the distinction between public domain and acquired land must be recognized. The BLM records reflect the current status of public domain land until the time it is patented. However, title records regarding acquired land which is purchased by the United States to be administered by a particular Government agency are usually held by that agency. Although the BLM may have the responsibility for administering the mineral laws upon such property, it is dependent upon other sources for title information.

Similarly, the distinction between a BLM oil and gas plat for acquired land and an official plat of survey prepared and accepted by the BLM with respect to public domain must be recognized. Although a plat of survey is an official determination with respect to the land boundaries of the public domain tract surveyed, an oil and gas plat does not have any official status as a record regarding title to acquired lands. Thus appellant's contention that the BLM oil and gas plat shows title to be in the United States is to no avail.

^{1/} Land records may include more than just the records in the county recorder's office. In the case of acquired lands, the records of the administering agency may disclose conveyances, contracts, or other instruments which are material even though unrecorded.

Appellant's memorandum of title asserts facts from which it can be inferred that title to the oil and gas deposits in the subject land is in the United States. It is alleged on the basis of a check of the county land records that: 1) the deeds by which the United States conveyed title to the subject acquired lands to private parties contained a reservation of oil and gas to the grantor, 2) there are no other mineral reservations of record affecting the land currently, and 3) there are no mineral deeds of record pertaining to the land. However, the record in this case contains copies of letters addressed to the surface owners of the subject land advising them of their right to purchase the reserved mineral interest pursuant to the Act of September 6, 1950, 7 U.S.C. § 1033 et seq. (1952), as amended, 7 U.S.C. § 1033 et seq. (1970), for the fair market value thereof. The file also contains copies of letters to the same parties indicating that their offers to purchase the reserved mineral interests had been accepted and that a quitclaim deed to minerals in the subject tracts had been prepared and delivered to a Soil Conservation Service official to be delivered to said private parties upon payment of the purchase price.

These latter materials, in the absence of further details not found in the case record, raise a substantial question regarding the ownership of mineral title in the subject land which is not resolved by appellant's memorandum. A deed does not have to be recorded in order to be binding between the parties thereto. 26 C.J.S. Deeds § 74 (1956); Walsh v. Kennedy, 115 Mont. 551, 147 P.2d 425 (1944) (Montana law); Seattle Renton Lumber Co. v. United States, 135 F.2d 989 (9th Cir. 1943). Therefore, appellant has failed to meet the burden of establishing the eligibility of the subject land for leasing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

